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Attorneys for Plaintiffs,
WARNER BROS. RECORDS INC.;
VIRGIN RECORDS AMERICA, INC.;
BMG MUSIC; MAVERICK
RECORDINGS COMPANY;
INTERSCOPE RECORDS; SONY BMG
MUSIC ENTERTAINMENT; and ARISTA
RECORDS LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WARNER BROS. RECORDS INC., a Delaware
corporation; VIRGIN RECORDS AMERICA,
INC., a California corporation; BMG MUSIC, a
New York general partnership; MAVERICK
RECORDINGS COMPANY, a California joint
venture; INTERSCOPE RECORDS, a California
general partnership; SONY BMG MUSIC
ENTERTAINMENT, a Delaware general
partnership; and ARISTA RECORDS LLC, a
Delaware limited liability company,
Plaintiffs,

v.

JOHN DOE,
Defendant.

CASE NO. C 07-03094 JCS

Honorable Joseph C. Spero

**EX PARTE APPLICATION TO EXTEND
TIME TO SERVE DEFENDANT AND
[PROPOSED] ORDER**

1 Pursuant to Rules 4(m) and 6(b)(1)(A) of the Federal Rules of Civil Procedure, Plaintiffs
2 respectfully request that the Court grant an additional 45 days to serve Defendant with the Summons
3 and Complaint. As further explained below, the Defendant in this case is a “John Doe” defendant.
4 While Plaintiffs believe they have discovered Defendant’s true identity, they have so far refrained, in
5 part at the request of Defendant’s counsel, from filing their First Amended Complaint naming
6 Defendant personally. Plaintiffs are now prepared to file their First Amended Complaint and request
7 additional time to effectuate service once the First Amended Complaint is filed. In support of their
8 request, Plaintiffs state as follows:

9 1. The current deadline for service of process on Defendant is January 9, 2008. The
10 Court issued an Order on September 12, 2007 granting Plaintiffs’ previous request for an extension
11 of the service deadline from the original date of October 11, 2007. The initial Case Management
12 Conference is scheduled for March 21, 2008, and the Court twice previously issued orders
13 continuing the Case Management Conference upon Plaintiffs’ requests.

14 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant John
15 Doe on June 13, 2007. Plaintiffs did not have sufficient identifying information to name Defendant
16 in the Complaint, but were able to identify Defendant by the Internet Protocol address assigned to
17 Defendant by Defendant’s Internet Service Provider (“ISP”) – here, University of California,
18 Berkeley. In order to determine Defendant’s true name and identity, Plaintiffs filed their *Ex Parte*
19 Application for Leave to Take Immediate Discovery on June 13, 2007, requesting that the Court
20 enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

21 3. The Court issued its Order for Leave to take Immediate Discovery on June 26, 2007,
22 which was served upon the ISP along with a Rule 45 subpoena. The ISP responded with
23 Defendant’s identifying information on August 1, 2007.

24 4. After receiving Defendant’s identifying information from the ISP, Plaintiffs notified
25 Defendant of their claim in writing. There followed multiple letters and telephone calls between
26 Plaintiffs and Defendant’s counsel. As part of these discussions, Plaintiffs agreed to refrain until
27 January 7, 2008 from filing their First Amended Complaint naming Defendant personally. If
28

1 Plaintiffs and Defendant are unable to resolve the dispute, Plaintiffs are prepared to file the First
2 Amended Complaint within the week.

3 5. Defendant's counsel has informed Plaintiffs that he is not opposed to an extension of
4 time for service.

5 6. Given the circumstances of this case, Plaintiffs respectfully request an additional 45
6 days to effectuate service to February 23, 2008.

7 7. Plaintiffs submit that the efforts to give written notice to Defendant of their claim and
8 subsequent efforts to resolve the case without further litigation constitute "good cause" under Rule
9 4(m) for any delay in perfecting service. *See Ritts v. Dealers Alliance Credit Corp.*, 989 F. Supp.
10 1475, 1479 (N.D. Ga. 1997) (stating good cause standard for service extensions). This Court has
11 discretion to enlarge the time to serve even where there is no good cause shown. *Henderson v.*
12 *United States*, 517 U.S. 654, 658 n. 5 (1996). Here, Plaintiffs acted in good faith to try to settle this
13 matter without potentially damaging Defendant's credit by naming her in the suit as well as
14 attempting to avoid the cost of further litigation for both parties. Plaintiffs also agreed to
15 temporarily refrain from taking further action in this matter at request of Defendant's counsel.
16 Moreover, unlike a traditional case in which the defendant is known by name and efforts to serve can
17 begin immediately after filing the complaint, in this case Plaintiffs first had to obtain the identity of
18 the defendant through the subpoena to the ISP.

19 8. Because the copyright infringements here occurred in 2007, the three-year limitations
20 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no
21 prejudice to the Defendant from any delay in serving the Complaint.

22 9. Plaintiffs will provide the Defendant with a copy of this request and any Order
23 concerning this request when service of process occurs.

24 Dated: January 8, 2007

HOLME ROBERTS & OWEN LLP


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26 By: /s/ Matthew Franklin Jaksa
27 MATTHEW FRANKLIN JAKSA
28 Attorney for Plaintiffs

ORDER

Good cause having been shown:

IT IS ORDERED that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b), Plaintiffs' time to serve the summons and complaint on Defendant is hereby extended to February 23, 2008.

Dated: Jan. 9, 2008

By:  Judge
Honorable
United States District Court
Northern District of California